IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6255 of 1995

to

FIRST APPEAL No 6301 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SPECIAL LAND ACQUISITION OFFICER

Versus

KOLI DHIRA MADHA

Appearance:
MR PG DESAI, GP IN FA 6255 TO 6275 OF 1995 for petitioner
MR SP DAVE, AGP IN FA 6276 TO 6288 OF 1995 for petitioner
MR LR POOJARI,AGP IN FA 6289 TO 6301 OF 1995 for petitioner. JAYANT PATEL, CENTRAL GOVT. STANDING COUNSEL FOR APPELLANT NO.2/DEO
MR VIPUL S MODI for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE R.P.DHOLAKIA
Date of decision: 22/07/98

COMMON ORAL JUDGEMENT (Per: Y.B.Bhatt,J.)

These are a group of appeals filed on behalf of the State of Gujarat under Sec.54 of the Land Acquisition Act read with Sec.96 CPC, challenging the common judgment and awards passed by the Reference Court under Sec.18 of the said Act.

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#. The lands in question were acquired for construction of the proposed Deesa Airfield and are situated in Village Kamoda in Deesa Taluka, District Banaskantha. The notification under Sec.4 of the said Act was published on 4th of August, 1986. The Land Acquisition Officer after following the due procedure under law, declared his award under Sec.11 of the said Act and offered thereunder the price of Rs.0=75 per sq.mtr. for non-irrigated land and Re.1/- for irrigated land. The original landholders not having the accepted the said award preferred their respective reference applications under Sec.18 of the said Act, which came to be heard and decided by the impugned judgment and awards. The Reference Court has after taking into consideration all the relevant and material evidence on record determined the market value of the lands at Rs.9/- per sq.mtr, this rate being applicable both to irrigated and non-irrigated lands.

#. The learned counsel for the appellants while challenging the determination of market value of the acquired lands at the hands of the Reference Court, submitted that this figure is excessive and not justifiable looking to the evidence on record and also looking to prior decisions of this Court in other parallel Land Reference Cases. In this context, our attention has been drawn to a decision of an earlier Division Bench in First Appeal Nos.2091 of 1993 to 2101 of 1993 (and other cognate matters) decided on 16th of March, 1996 (hereinafter referred to as `the said decision').

3.1 Firstly, we note that the said decision by the earlier Bench is also rendered in a group of First Appeals filed by the State under Sec.54 of the Land Acquisition Act read with Sec.96 CPC, wherein the challenge was to a common judgment and awards rendered by the Reference Court in land acquisition cases arising from the very same acquisition. To be more specific, the purpose of acquisition in the instant case and the purpose of acquisition in the said decision was identical. Furthermore, the notification under Sec.4 in

the instant group of matters and that in the said decision was identical, i.e. to say, all the Land Reference Cases, decided by the Reference Court under Sec.18 arose from the very same notification under Sec.4. Furthermore, we find that the lands acquired in the instant case are from the Village Kamoda, whereas the said decision deals with acquisitions of land from three Villages, including the instant Village Kamuda. Thus, the learned counsel for the appellants submits that the aforesaid decision would completely cover the facts of these cases and that, therefore, the market value of the acquired lands determined under the said decision can be followed in the present group of appeals. As against this submission, the learned counsel for the respondent contended that each decision rendered in each Appeal arising from each Land Reference Case is a separate decision based upon the facts and circumstances of each case and must be assessed in the light of the specific evidence on record. No doubt, this appears to be a logical submission so far as the basic principles of interpretation of evidence are concerned. However, it is well settled principle of law that while determining the market value under Sec.18 of the said Act, and while deciding the Appeals under Sec.54 of the same Act, market value has to be determined by the concerned Court in the light of principles laid down in Sec.23 of the said Act, and that the very process and nature of such determination is such that no mathematically precise determination is possible nor should it be expected. Furthermore, the aforesaid decision is not merely a technical decision in law, but is also a decision on merits and a decision rendered after considering all the evidentiary material on record. Thus, if this Bench were to follow the market value determined by the previous Bench in a decision rendered on merits after consideration of all the evidence on record, it could not possibly be suggested that this Bench was merely adopting a figure taken from an earlier decision without reference to the evidentiary material on record. It is equally open to this Bench to discuss the entire evidentiary material on record on the specific facts of each particular Land Reference Case, and then arrive at the very same market value as determined by the earlier Bench in the said decision. We, therefore, see no purpose in duplicating the entire exercise merely to satisfy the technical objection raised by the learned counsel for the respondent. On the other hand, on a specific enquiry to learned counsel for the respondent, to point out any specific reason as to why the market value determined in the said decision should not be followed by this Bench, no specific and clear answer was rendered to us. We,

therefore, see no reason why the market value as determined in the said decision should not be followed by this Bench. We, therefore, determine the market value of the acquired lands at Rs.7/- per sq.mtr. for both irrigated and non-irrigated lands.

#. However, one contention raised by the learned counsel for the respondent requires to be accepted. In this context, it was submitted that the reference Court has directed a deduction of 5% from the compensation allowable, in case the acquired lands happened to be new tenure lands. It is by now well settled law laid down by the Supreme Court (that no such deduction is permissible) in the case of State of Maharashtra Vs. Babu Govind reported in AIR 1996 Supreme Court page 904, which decision has also been followed by this Court in the case of Deputy General Manager, ONGC Vs. Chaturji Lalaji reported in 1998 (1) GLR page 130. This position is not contested by learned counsel for the appellants. Therefore, this deduction of 5% as directed by the Reference Court is quashed and set aside. Accordingly, we direct that there shall be no such deduction.

#. We may also note here only by way of confirmation of our findings recorded herein, that the said decision (which we have relied upon herein and discussed earlier) was challenged before the Supreme Court by the Union of India by filing a group of SLPs which came to be numbered as Special Leave to Appeal (Civil) Nos. 18183 to 18463 of 1997 (and others in the same group of SLPs). The Supreme Court issued notice to the opponents therein, i.e. to say, the respondents in the First Appeals in the said decision, and after hearing both sides dismissed the aforesaid SLPs, by its order dated 5th January, 1998. A certified copy of the said order of the Supreme Court has been made available to us for perusal. Thus, we find that by the dismissal of the said SLPs, the said decision has been confirmed by the Supreme Court.

5.1 We are also required to note, in view of certain submissions made by the learned counsel for the respondent, that the dismissal of the SLP does not necessarily amount to confirmation of the impugned judgment, and/or in a given set of circumstances, would not amount to confirmation of the entire judgment read as a whole. The learned counsel for the respondent wanted to elaborate on this submission with reference to certain decisions. This we have not permitted, in as much as in our opinion, in view of the settled position of law, no such controversy can be raised or entertained. In our opinion, the said decision of the earlier Bench stands

confirmed, on all aspects dealt with therein; furthermore, it stands confirmed on merits.

#. The learned counsel for the respondent also sought to urge that the said decision has not been accepted by the respondents of those appeals, and such respondents have filed Review Applications for reviewing the said judgment and order. He further submits that the same are pending and that, therefore, this Bench ought not to regard the said decision as final. To our mind, this is an irrelevant consideration. We are conscious of the fact that the Review Applications are not before this Bench, and that, therefore, any observations which we may make as regards the maintainability of such applications would not directly arise. However, only to deal with the contention raised by the learned counsel for the respondent, we are required to observe that once the judgment delivered by a Court is confirmed on merits by a superior Court, the judgment which has been confirmed is no longer open to review, and an application for that purpose would not be maintainable. This is the principle laid down by the Supreme Court in the case of Shri Narayan Dharmasangham Trust reported in 1997(6) SCC page 78. We merely refer to this decision to indicate that the attempt of the learned counsel for the respondent to dissuade us from following the said decision must fail.

#. This takes us to another aspect of the matter and that is the aspect of computation of interest under Sec.28 of the said act, and also computation of additional compensation under Sec.23(1-A) of the said Act. In the computation of both these amounts, it is essential that the date of taking possession of the lands is determined and/or determinable.

7.1 However, we find from a very detailed discussion in the said decision, that the date of taking possession, and the factum of whether possession was given and/or taken, is in itself at large and in controversy. It was for that reason that the earlier Bench in the said decision was required to lay down certain actions to be taken by the parties to the appeal so that the factum of possession, and in consequence, the date of taking possession could be ascertained and identified, ultimately with a view to ensure that the amounts due under Sec.28 as also under Sec.23(1-A) of the Act could be computed and paid to the original claimants.

7.2 At this juncture, the learned counsel for the respondent submitted that it is not necessary for this Bench to follow the directions given by the earlier Bench

with a view to resolve this controversy. In this context, he submitted that possession was taken by applying the urgency clause under Sec.17 of the said Act, and for this reason also, such a controversy would not arise. However, in our opinion, this is neither here nor there. We are inclined to issue directions pari materia with the directions issued by the earlier Bench in the said decision, not necessarily because there is a demonstrable controversy in existence, but also because we find from a large number of cognate proceedings which we have had to deal with, that in all probability such a controversy may or would arise. It is only on account of this possibility that we are inclined to issue directions in question. In any case, we have been made conscious by the learned counsel for the appellants that in cognate proceedings including proceedings under the Contempt of Courts Act, such a controversy has, in fact, arisen. In the case of certain land owners, as in the instant group of cases, it was contended that the State took possession under Sec.17 of the Act and that there is appropriate documentation on record. On the other hand, learned counsel for the appellants informed us that there have been a large number of cases where although the possession was once handed over to the State and/or the acquiring body, the respondents-landholders have re-entered into the land. On the other hand, our attention has also been drawn to the fact that in certain cases although the possession was handed over on paper, the actual and physical possession of the land in question was not handed over. Under the circumstances, we see no reason why directions ought not to be issued by this Bench as well, pari materia with the directions issued by the earlier Bench, for the object stated hereinabove. In any case, the learned counsel for the respondent was unable to rebut the suggestion of this Court that even if the directions are issued, they may at the most be regarded to be redundant, and certainly they could not be said to be prejudicial to the interest of the landholders.

7.3 In any case, even the directions issued by the earlier Bench in the said decision stand confirmed by the Supreme Court by the dismissal of the SLPs.

#. In the premises aforesaid, we further issue directions hereinafter stated, with the clarification that the same shall be complied with by the parties concerned if, and as and when, the controversy as to possession arises. Accordingly, we direct as under:

(i) The Collector of the District shall form a team

under his direct supervision and control where he can take assistance of Officers working under him up to the level of Deputy Collector and preferably that of Prant Officer of the Prant, if there be any and visit the place physically, ascertain the position during the entire period right from the date of publication of notification under Sec.4, i.e. 4.8.1986 till today and for that purpose, 7/12 extracts of the relevant years, the land assessment record which is referred to as Anawari statement and if scarcity during the relevant period is declared, payment of scarcity subsidy, if any made, also be taken into consideration and likewise panchnamas that were drawn in respect of land under acquisition and which are brought on record may also be taken into consideration. To facilitate the work of the learned Collector of the District, the State Authority or the Estate Officer, Deesa Airfield, are directed to supply the copies of panchnamas and produce the same before the Collector.

(ii) It is further directed that at the time when team is to visit the land in question, the visit shall be brought to the notice of the Villagers and particularly claimants by notifying the Panchayat of that Village and also pasting notice on Panchayat Office prominently. It is also left open to the claimants to inform the Collector that over and above said publication of notice, written notice may be given to one person designated by the claimants in respect of one Village and notice so given to that person shall be considered to be sufficient notice to all the claimants of that Village. This intimation should be given to the claimants within a week of Collector of Banaskantha District, at Palanpur receiving copy of this order.

(iii) The aforesaid directions as to ascertainment of physical position should be carried out on or before 31st of January, 1999 and after that exercise is completed on the basis of the facts ascertained by the Collector, interest as awarded by the trial Court shall be paid to the person(s) concerned.

(iv) The amount payable to the claimants on the aforesaid market value basis without the amount of interest, will be deposited within a period of

eight weeks from today. So far as the amount payable towards interest is concerned, it shall be deposited within six weeks from the date of ascertainment as per the directions given to the Collector of the District.

(v) So far as principal sum is concerned, those claimants who have actually and physically handed over the possession of the land and have not resumed the possession or in whose regard there is no dispute according to the record of the Collector, they may approach the learned Collector of the district with an application in that regard and after verifying the position from the record of the Collectorate as well as after consulting the Defence Estate Officer, Ahmedabad, make an endorsement on the application on the basis of which the payment of principal sum shall be made to that claimant without waiting for said ascertainment exercise to be over.

#. Accordingly, these appeals stand partly allowed, and impugned judgment and awards stand modified only to the extent indicated herein. There shall be no orders as to costs. Decree accordingly.

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